

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 42, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when they failed to properly compensate Carman R. E. Pumphrey for service on second rest day.
2. That the Seaboard Coast Line Railroad Company be ordered to compensate Carman R. E. Pumphrey an additional four (4) hours at straight time rate.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This is a most unusual and difficult case.

The claimant occupied a relief position that works the following days and times:

Thursday.....7:00 A.M. to 3:00 P.M.
Friday.....7:00 A.M. to 3:00 P.M.
Saturday.....7:00 A.M. to 3:00 P.M.
Sunday.....11:00 P.M. to 7:00 A.M.
Monday.....11:00 P.M. to 7:00 A.M.

Carrier has a right to establish such assignments under Rule 7(e):

"(e) REGULAR RELIEF ASSIGNMENTS - All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the

"work necessary on rest days of assignments in six or seven-day service or combination thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under individual agreements.

Assignments for regular relief positions may on different days include different starting time, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving."

The Union argues the claim is supported by Article V of the April 24, 1970 Agreement which states:

"ARTICLE V - OVERTIME RATE OF PAY

All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof.

The foregoing provision is effective April 24, 1970."

The claimant worked all five shifts in his work week preceding the claim date including the last assignment of the week on Monday night, 11:00 PM to 7:00 AM, Tuesday. He then returned at 3:00 PM Tuesday and worked until 11:00 PM. He also worked Wednesday 3:00 PM until 11:00 PM. He returned to the first shift of his work week eight hours later at 7:00 AM, Thursday. For the 3:00 PM to 11:00 PM shift on Tuesday and Wednesday, he was paid 1 1/2 for each shift, but he claims he should have been paid double time for Wednesday under article V because it was his second rest day and because the 3:00 PM to 11:00 PM shift Tuesday was work on the first rest day.

The Carrier disagrees. They argue that the work on Tuesday was not work on his first rest day, but work performed as part of the fifth day of his assignment. They argue that, and cite support in Awards, that a work day is a 24 hour period beginning with the starting time of one's regular shift. The claimant's fifth work day, they say, did not end until Tuesday 11:00 PM account his starting time of his last day was 11:00 PM Monday. The first rest day, they say, begins at the end of the last work day, in

this case 11:00 PM Tuesday. It then follows that the work on Tuesday 3:00 PM to 11:00 PM was not work on a rest day particularly not the first rest day. The first rest day they claim began Tuesday 11:00 PM ending Wednesday 11:00 PM. The work on Wednesday 3:00 PM to 11:00 PM could not have been on the second rest day, but the first.

The Organization retorts that to follow the Carrier's logic the second rest day would run then from 11:00 PM Wednesday to 11:00 PM Thursday. This, they say, is not possible because the claimant's first day of the work day begins at 7:00 AM Thursday. Additionally, it raises the possibility that if what the Carrier says is true, the 7:00 AM to 3:00 PM shift on Thursday (the second rest day under their logic) is potentially payable at double time, if not time and one-half.

The dispute essentially comes down to what is meant as a work day, and what is meant as a rest day for an employee such as the claimant who works non-regular shifts, i.e., those where the starting times are not evenly spaced. Two things remain clear throughout this "who's on first?" scenario. Rule 1(e) unambiguously dictates all relief assignments will have five days of work and two days of rest. Further, it is factual that a week consists of seven equal periods of 24 hours each. There is no evidence that the word "day" as used in Rule 1(e) was used in more than one sense. Therefore, a week is to consist of seven equal periods - five to be considered work and two considered rest.

To adopt the Carrier's reasoning would literally result in a situation where the employee wouldn't know whether he was coming or going, starting or ending his work week; and additionally and effectively only give him 1 1/3 rest days - 11:00 PM Tuesday to 11:00 PM Wednesday (24 hrs.) and 11: PM Wednesday to 7:00 AM Thursday (8 hrs.) when he starts his work week Thursday morning. Further, he could never be entitled to double time except for one eight-hour period. We cannot say (reading Article V and Rule 1(e) together) that the parties intended that relief employees have fewer rest days or less double time opportunities than regular employees. There is no such distinction or exception in the Agreement. It is often said that when two interpretations are possible - one with reasonable results or one with absurd results - the reasonable one will be applied. In light of the unambiguous language of Rule 1(e), it is clear that the Carrier's logic must be rejected. The claimant is entitled to two rest "days". It is implied in the Agreement that rest days are to be equal in meaning and in duration to a work day.

The Carrier cites Second Division Awards 6406 and 6375, but under close scrutiny they are quite distinguishable on the facts. In both cases the claimant worked a regular assignment that started the same time daily. These were cases where the employee worked 11:00 PM to 7:00 AM five days a week, Thursday through Monday, and doubled through at the end of his fifth day on Tuesday. The Board held that, under the well-established principle that a work day is the 24-hour period beginning at the start of an employee's shift, the work day did not end and the rest day did not

start until 11:00 PM Tuesday, therefore the shift worked 7:00 AM to 3:00 PM Tuesday, was not work on the first rest day. We do not disagree with the results or the principles enunciated in the above awards, as applied to their factual situation. They simply are not applicable to this situation where the starting time is not the same daily. They relied on a definition of work day that is inconsistent with the directives of Rule 1(e) where a relief assignment starting time is split between three days and two nights. The Carrier relied on two Second Division Awards - Second Division Award 1485 stated:

"... a day is the twenty four hour period immediately following the starting time of the daily assignment."
(Emphasis added.)

In Second Division Award 6406 it was stated:

"This Board finds that the definition of the work day has long been held in this industry to be the twenty-four hour period beginning with the starting time of the employee's regular shift...." (Emphasis added.)

These Awards are distinguishable because the claimant's assignment is not a "daily" or "regular" assignment, in the sense it does not start the same time daily or at the same time regularly. This is not to say that the claimant is not regularly assigned within the meaning of Article V of the April 24, 1970 Agreement.

The question still remains when does the claimant's two rest days start? It is our decision that the rest days of a relief employee similarly situated as the claimant are the calendar days or days of the week that he has no scheduled starting time. In this case any shift other than the five assigned shifts that starts on the calendar day, Tuesday, or on the calendar day, Wednesday, are shifts worked on rest days. This, in reality, is not in conflict with the Awards cited by the Carrier in that they both accomplish the same thing; the seven day week is divided into equal parts - five which are available for regular assignment subject to rules governing work on assigned days, and two available for rest subject to rules governing work on rest days. Even Award 6406, cited by the Carrier, stated:

"It follows as well that the rest day must have a definition consistent with the work day."

Considering the unevenly spaced starting times of the shifts the Carrier's logic does not meet the consistency test of Award 6406. The decision here does make the rest day and the work day consistent.

A W A R D

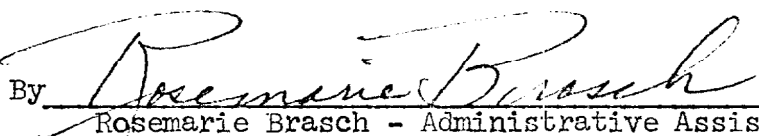
Claim sustained.

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Award No. 8040
Docket No. 7866
2-SCL-CM-'79

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1979.